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EQUALITY CALIFORNIA and
GAY-STRAIGHT ALLIANCE NETWORK

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA EDUCATION COMMITTEE, LLC and PRISCILLA SCHREIBER,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, in his official capacity as Governor of the State of California; EDMUND G. BROWN, JR., in his official capacity as Attorney General of the State of California; JACK O'CONNELL in his official capacity as California Superintendent of Public Instruction; and DOES 1 through 20 inclusive,

Defendants.

CALIFORNIA EDUCATION COMMITTEE, LLC and PRISCILLA SCHREIBER,

Plaintiffs,

v.

EQUALITY CALIFORNIA and GAY-STRAIGHT ALLIANCE NETWORK,

Defendant-Intervenors.

Case No.: 07-CV-02246-BTM-WMC

Judge: Hon. Barry Ted Moskowitz

ANSWER OF DEFENDANT-INTERVENORS EQUALITY CALIFORNIA AND GAY-STRAIGHT ALLIANCE NETWORK [MOTION TO INTERVENE PENDING]

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Defendant-Intervenors Equality California and the Gay Straight Alliance Network ("GSA Network") (collectively referred to as "Defendant-Intervenors") hereby respond to the complaint ("Complaint") of Plaintiffs California Education Committee, LLC and Priscilla Schreiber as follows:

I.

INTRODUCTION

1. In answer to paragraph 1 of the Complaint, Defendant-Intervenors admit that the Governor of California recently signed into law Senate Bill 777 ("SB 777"). With respect to the Complaint's allegation that SB 777 "will take effect on January 11, 2008," Defendant-Intervenors admit that SB 777 will be in effect on January 11, 2008 because it will go into effect on January 1, 2008, but deny that January 11, 2008 is the date on which the bill "will take effect." Defendant-Intervenors admit that SB 777 is "part of an overall nondiscrimination scheme applicable to schools in California." With respect to the Complaint's allegation about the reasons Plaintiffs bring this lawsuit, Defendant-Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation and, on that basis, deny it. To the extent the allegations contained in paragraph 1 of the Complaint constitute argument and legal conclusions, such allegations do not require a response. Defendant-Intervenors deny the remaining allegations contained in paragraph 1 of the Complaint.

II.

JURISDICTION AND VENUE

2. In answer to paragraph 2 of the Complaint, Defendant-Intervenors admit that the first cause of action in the Complaint alleges violations of the due process clause of the Fourteenth Amendment to the United States Constitution and mentions the First Amendment in paragraph 31 of the Complaint and that the second cause of action alleges a violation of California Constitution Article 1, Section 1. Defendant-Intervenors deny that either of these causes of action have merit. With respect to Plaintiffs' allegation that Plaintiffs' action "arises under" the Civil Rights Act (42 U.S.C. sections 1983 and 1985), Defendant-Intervenors deny that Plaintiffs have stated a valid claim under the Civil Rights Act (42 U.S.C. sections 1983 and

1985) or have a right to any remedy or relief under the Civil Rights Act (42 U.S.C. sections 1983 and 1985). To the extent the allegations contained in paragraph 2 of the Complaint constitute argument and legal conclusions, such allegations do not require a response.

3. In answer to paragraph 3 of the Complaint, Defendants admit that the Complaint seeks to invoke this Court's jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1343. To the extent the allegations contained in paragraph 3 of the Complaint constitute argument and legal conclusions, such allegations do not require a response. Defendant-Intervenors deny the remaining allegations contained in paragraph 3 of the Complaint.

4. In answer to paragraph 4 of the Complaint, Defendant-Intervenors admit that the Complaint seeks this Court's exercise of supplemental jurisdiction over this case pursuant to 28 U.S.C. § 1367. Defendants deny that this Court should exercise supplemental jurisdiction over any portion of this case. To the extent the allegations contained in paragraph 4 of the Complaint constitute argument and legal conclusions, such allegations do not require a response. Defendants deny the remaining allegations of paragraph 4.

5. In answer to paragraph 5 of the Complaint, Defendant-Intervenors admit that venue is proper in the Southern District of California under 28 U.S.C. § 1391 and that several Defendants maintain offices in the district. Defendant-Intervenors deny the remaining allegations contained in paragraph 5 of the Complaint.

6. In answer to paragraph 6 of the Complaint, to the extent the allegations contained in paragraph 6 of the Complaint constitute argument and legal conclusions, such allegations do not require a response. Defendant-Intervenors deny that Plaintiffs are entitled to any remedy or relief, and deny that the Court is authorized to grant any relief, under 28 U.S.C. §§ 2201-02, Rule 65 of the Federal Rules of Civil Procedure, the First Amendment to the United States Constitution, or the Due Process Clause of the Fourteenth Amendment.

7. In answer to paragraph 7 of the Complaint, Defendant-Intervenors deny that Plaintiffs are entitled to any relief, including but not limited to costs or attorney fees, pursuant to 42 U.S.C. § 1988.

III.

IDENTIFICATION OF THE PARTIES

8. In answer to paragraph 8 of the Complaint, Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in lines 18 through 22 on page 3 of the Complaint and, on that basis, deny the allegations contained therein.

a. Defendant-Intervenors admit that Larry Urdahl, Robert Shield, and Jim Kelly and school board members for the Grossmont Union High School District, a public school district located in San Diego County California. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 8a of the Complaint and, on that basis, deny the allegations contained therein.

b. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 8b of the Complaint and, on that basis, deny the allegations contained therein.

c. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 8c of the Complaint and, on that basis, deny the allegations contained therein.

d. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 8d of the Complaint and, on that basis, deny the allegations contained therein.

e. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 8e of the Complaint and, on that basis, deny the allegations contained therein.

9. In answer to paragraph 9 of the Complaint, Defendant-Intervenors admit that Plaintiff Priscilla Schreiber is a school board member for the Grossmont Union High School District, a public school district located in San Diego County Cailfornia. Defendant-

Intervenors lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 9 of the Complaint and, on that basis, deny the allegations contained therein.

10. In answer to paragraph 10 of the Complaint, Defendant-Intervenors admit that Defendant Arnold Schwarzenegger is the Governor of the State of California and that Arnold Schwarzenegger, as Governor, signed the Senate Bill 777 into law. Defendant-Intervenors admit that the Complaint names the Governor in his official capacity. Defendant-Intervenors admit that the Office of the Governor maintains an office in San Diego County, California. To the extent the allegations contained in paragraph 10 of the Complaint constitute argument and legal conclusions, such allegations do not require a response. With respect to the allegation that the Office of Governor "is established, organized, and authorized under and pursuant to the laws of California with the authority to sue and be sued in its own name," Defendant-Intervenors lack knowledge and information sufficient to form a belief as to the truth of this allegation as it may be material to this lawsuit and, on that basis, deny it. With respect to the allegation that the Governor "is responsible to uphold and enforce the laws of California, including Senate Bill 777 and California's prohibition of discrimination against persons on the basis of 'gender' as defined in California law," Defendant-Intervenors lack knowledge and information sufficient to form a belief as to the truth of this allegation as it may be material to this case and, on that basis, deny it.

11. In answer to paragraph 11 of the Complaint, Defendant-Intervenors admit that Defendant Edmund G. Brown, Jr. is the Attorney General for the State of California. Defendant-Intervenors admit that the Office of the Attorney General maintains an office in San Diego County, California. Defendant-Intervenors admit that the Complaint names the Attorney General in his official capacity. To the extent the allegations contained in paragraph 11 of the Complaint constitute argument and legal conclusions, such allegations do not require a response. With respect to the allegation that the Office of Attorney General "is established, organized, and authorized under and pursuant to the laws of California with the authority to sue and be sued in its own name," Defendant-Intervenors lack knowledge and information

sufficient to form a belief as to the truth of this allegation as it may be material to this case and, on that basis, deny it. With respect to the allegation that the Attorney General "is responsible to prosecute and enforce the laws of California, including Senate Bill 777 and California's prohibition of discrimination against persons on the basis of 'gender' as defined in California law," Defendant-Intervenors lack knowledge and information sufficient to form a belief as to the truth of this allegation as it may be material to this case and, on that basis, deny it.

12. In answer to paragraph 12 of the Complaint, Defendant-Intervenors admit that Defendant Jack O'Connell is the Superintendent of Public Instruction for the State of California. Defendant-Intervenors admit that the Complaint names the Superintendent in his official capacity. To the extent the allegations contained in paragraph 12 of the Complaint constitute argument and legal conclusions, such allegations do not require a response. With respect to the allegation that the Superintendent of Public Instruction "is established, organized, and authorized under and pursuant to the laws of California with the authority to sue and be sued in its own name," Defendants lack knowledge and information sufficient to form a belief as to the truth of this allegation as it may be material to this case and, on that basis, deny it. With respect to the allegation that the Superintendent of Public Instruction "is responsible to enforce the education laws of California," Defendants lack knowledge and information sufficient to form a belief as to the truth of this allegation as it may be material to this case and, on that basis, deny it.

13. In answer to paragraph 13 of the Complaint, Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 13 and, on that basis, deny the allegations contained therein.

IV.

STATEMENT OF FACTS

14. In answer to paragraph 14 of the Complaint, Defendant-Intervenors admit that the California Secretary of State chaptered Senate Bill 777 into law on October 12, 2007, after it was signed by Governor Schwarzenegger. With respect to the Complaint's allegation that SB 777 "will take effect on January 11, 2008," Defendant-Intervenors admit that SB 777 may be in

effect on January 11, 2008 because it will go into effect on January 1, 2008 but deny that January 11, 2008 is the date on which the bill "will take effect."

15. In answer to paragraph 15 of the Complaint, Defendant-Intervenors admit that, pursuant to SB 777, California Education Code § 220 will be amended to add "gender" and "sexual orientation" expressly to the classifications in Education Code § 220. Defendant-Intervenors deny that, pursuant to SB 777, Education Code § 220 will be amended "to remove the term 'sex' as a classification" because the term "sex" is included in the definition of gender pursuant to Education Code § 210.7 as amended by SB 777. Defendant-Intervenors admit that as amended by SB 777, Education Code § 220 will read as follows: "No person shall be subjected to discrimination on the basis of disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid."

16. In answer to paragraph 16 of the Complaint, Defendant-Intervenors admit the allegations contained in paragraph 16.

17. In answer to paragraph 17 of the Complaint, Defendant-Intervenors deny that SB 777 "redefines the term 'gender.'" Defendant-Intervenors admit that SB 777 adds Education Code § 210.7, which will read as follows: "'Gender' means sex, and includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth."

18. In answer to paragraph 18 of the Complaint, Defendant-Intervenors admit that SB 777 will repeal Education Code § 212, which currently defines "sex" as 'the biological condition or quality of being a male or female human being. Defendant-Intervenors deny the remaining allegations contained in paragraph 18.

19. In answer to paragraph 19 of the Complaint, Defendant-Intervenors admit the allegations contained in paragraph 19.

20. In answer to paragraph 20 of the Complaint, Defendant-Intervenors admit that SB 777 requires educators to avoid discriminating against any individual employee, student, or other person based upon that individual's "gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth." To the extent the allegations contained in paragraph 20 of the Complaint constitute argument and legal conclusions, such allegations do not require a response. Defendant-Intervenors deny the remaining allegations in paragraph 20.

21. In answer to paragraph 21 of the Complaint, Defendant-Intervenors deny the allegations contained in paragraph 21.

22. In answer to paragraph 22 of the Complaint, Defendant-Intervenors admit that Senate Bill 777 amends Education Code §51500 to state as follows: "No teacher shall give instruction nor shall any school district sponsor any activity that promotes a discriminatory bias because of a characteristic listed in Section 220." Defendant-Intervenors deny the remaining allegations in paragraph 22.

23. In answer to paragraph 23 of the Complaint, Defendant-Intervenors admit that California Penal Code § 422.55(a)-(b) establishes the definition of a hate crime and provides:

(a) "Hate crime" means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: (1) Disability. (2) Gender. (3) Nationality (4) Race or ethnicity. (5) Religion. (6) Sexual orientation. (7) Association with a person or group with one or more of these actual or perceived characteristics.

(b) "Hate crime" includes, but is not limited to, a violation of Section 422.6.

Defendant-Intervenors deny the remaining allegations in paragraph 23.

24. In answer to paragraph 24 of the Complaint, Defendant-Intervenors admit the allegations contained in paragraph 24.

25. In answer to paragraph 25 of the Complaint, Defendant-Intervenors admit that California Penal Code § 422.6(a) provides:

(a) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.

Defendant-Intervenors deny the remaining allegations contained in paragraph 25.

26. In answer to paragraph 26 of the Complaint, Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in lines 17 through 19 regarding the responsibilities of unidentified "public school administrators" and "educators," and on that basis, Defendant-Intervenors deny the allegations contained therein. To the extent the allegations contained in paragraph 26 of the Complaint constitute argument and legal conclusions, such allegations do not require a response. Defendant-Intervenors deny the remaining allegations contained in paragraph 26.

27. In answer to paragraph 27 of the Complaint, Defendant-Intervenors deny the allegations contained in paragraph 27.

V.

FIRST CAUSE OF ACTION

Alleged Violation of the Due Process Clause of The Fourteenth Amendment to the United States Constitution

28. In answer to paragraph 28 of the Complaint, Defendant-Intervenors incorporate by reference their responses to paragraphs 1 through 27 of the Complaint set forth above in paragraphs 1 through 27 of this Answer as though fully set forth herein.

29. Defendant-Intervenors deny the allegations contained in paragraph 29 of the Complaint.

30. Defendant-Intervenors deny the allegations contained in paragraph 30 of the Complaint.

31. Defendant-Intervenors deny the allegations contained in paragraph 31 of the Complaint.

32. Defendant-Intervenors deny the allegations contained in paragraph 32 of the Complaint.

33. Defendant-Intervenors deny the allegations in paragraph 33 of the Complaint and deny that the Court should grant any of the relief set forth in the Complaint's Prayer for Relief.

VI.

SECOND CAUSE OF ACTION

California Constitution, Article 1, Section 1

34. In answer to paragraph 34 of the Complaint, Defendant-Intervenors incorporate by reference their responses to paragraphs 1 through 34 of the Complaint set forth above in paragraphs 1 through 34 of this Answer as though fully set forth herein.

35. Defendant-Intervenors admit the allegations contained in paragraph 35 of the Complaint.

36. Defendant-Intervenors admit that Plaintiffs' members "are entitled to safety and privacy." To the extent the allegations contained in paragraph 36 of the Complaint constitute argument and legal conclusions, such allegations do not require a response. Defendant-Intervenors deny the remaining allegations contained in paragraph 36 of the Complaint.

37. Defendant-Intervenors deny the allegations contained in paragraph 37 of the Complaint and deny that the Court should grant any of the relief set forth in the Complaint's Prayer for Relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

By All Defendant-Intervenors Against All Plaintiffs

38. Plaintiffs' claims fail to allege facts sufficient to state or constitute a claim for a violation of the U.S. Constitution, the Civil Rights Act (42 U.S. C. sections 1985 and 1983), or the California Constitution, or any other laws and further fail to allege facts sufficient to entitle

Plaintiff to the relief sought, or to any other relief whatsoever. In addition, Plaintiffs are not entitled to costs or attorney's fees under 42 U.S.C. section 1988 or otherwise.

SECOND AFFIRMATIVE DEFENSE

(Lack of Subject Matter Jurisdiction)

By All Defendant-Intervenors Against All Plaintiffs

39. The Court lacks subject matter jurisdiction over all or some of the claims alleged in the Complaint.

THIRD AFFIRMATIVE DEFENSE

(Eleventh Amendment Immunity)

By All Defendant-Intervenors Against All Plaintiffs

40. The Eleventh Amendment to the United States Constitution provides immunity from suit to the State Defendants sued in their official capacities as to all or part of the Complaint's Causes of Action.

FOURTH AFFIRMATIVE DEFENSE

(No Deprivation of Rights)

By All Defendant-Intervenors Against All Plaintiffs

41. None of the statutes challenged in the Complaint have deprived or will deprive any person of any right, privilege or interest guaranteed by the California Constitution or the United States constitution.

FIFTH AFFIRMATIVE DEFENSE

(Lack of Ripeness)

By All Defendant-Intervenors Against All Plaintiffs

42. Plaintiffs' claims fail because some or all are not ripe for adjudication.

SIXTH AFFIRMATIVE DEFENSE

(Lack of Standing)

By All Defendant-Intervenors Against All Plaintiffs

43. Plaintiffs' claims fail because Plaintiffs do not have standing to assert some or all of them.

SEVENTH AFFIRMATIVE DEFENSE

(Lack of Damage)

By All Defendant-Intervenors Against All Plaintiffs

44. The Complaint and each claim for relief alleged therein are barred because Plaintiffs have not suffered any damage.

EIGHTH AFFIRMATIVE DEFENSE

(Injury to the Public)

By All Defendant-Intervenors Against All Plaintiffs

45. Plaintiffs are barred from obtaining relief sought in the Complaint because such relief would cause undue injury to the public.

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WHEREFORE, Defendant-Intervenors Equality California and GSA Network pray as follows:

1. That Plaintiffs take nothing by virtue of the Complaint herein and that this action be dismissed in its entirety with prejudice;

2. For costs of suit and attorneys' fees herein incurred; and

3. For such other and further relief as this Court may deem just and proper.

Dated: December 21, 2007

Respectfully submitted,

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